

Terrorist Attack Upstages Legal Services Initiative, But Provides Greater Urgency For It

By Thomas Adcock

One morning last year, David Bookstaver arrived at work in lower Manhattan and literally pulled the plug on the first official news of what is surely the most substantial initiative for pro bono publico in the history of the New York State Unified Court System - establishment of the "Access to Justice Center," the first court-sponsored entity in the nation to address the shortfall of civil legal services to the poor.

As communications director for the courts, Mr. Bookstaver ordinarily has the duty of spreading such news across the state. But on the morning in question, Mr. Bookstaver, a former journalist, knew there was only one story to be told: the big one still making headlines, known as simply "9/11."

Mr. Bookstaver was himself caught up in the middle of that big story, walking along West Street on the way to his office. At 9:03 a.m., the second terrorist- piloted plane of the day screamed overhead, then slammed into the south tower of the World Trade Center.

With building debris and an ocean of smoke and dust pouring down from the sky, Mr. Bookstaver ran for his life - four blocks southeasterly to the Office of Court Administration at 25 Beaver Street. He would later tell a New York Law Journal reporter of the "deafening, thunderous, whistling noise that was like a missile - a sound I never hope to hear again."

Finally, he was safe inside OCA headquarters, part of a 30-story complex. But even there, he recollected, the walls shook and a telephone slid off his desk as the twin towers of the former World Trade Center imploded and collapsed. He spotted his assistant, Mai Yee, at the fax machine. She had just sent the official news to the first contact on her list: the Law Journal.

"I took the cord out of the wall from the fax machine," Mr. Bookstaver said in a recent interview. "I said, 'Look, I'm not going to send out something that's terribly important that could be construed as trivial.' "

Meanwhile in Albany, three top jurists were set to back up the news release with a press conference - Chief Judge Judith S. Kaye, Chief Administrative Judge Jonathan Lippman and Judge Juanita Bing Newton, deputy chief administrative judge for justice initiatives. But never mind, news of the Justice Center - all the more important in the wake of Sept. 11, an event that left thousands more New Yorkers impoverished - would have to wait. Mr. Bookstaver's reasoning for the delay went deeper than journalistic instinct, back to his years as press officer for the Emergency Services Unit of the New York Fire Department. With reference to the devastation he witnessed, he said, "Most people would

think that with all those firefighters that it was OK, that things were under control. But I know too much. I knew that friends of mine were dying in those buildings."

Thus, the consensus-building for the Justice Center's main order of business - the creation of a working structure for the orderly donation of legal services by the private bar - did not commence until last June, with the first of four pro bono convocations held at the Manhattan campus of Fordham University School of Law.

Two more convocations are scheduled for October: at the State University of New York campus in Buffalo on Oct. 15; and at Albany Law School on Oct. 25. The final convocation is set for Nov. 8 in Geneva at the Ramada Inn. Notes on the wide-ranging discussions at each convocation will be compiled by Judge Newton's office and submitted to the Court of Appeals for further consideration.

Public Service Bar Exam

At the same time, though in a far less formal way, consensus building also began in June for yet another far-reaching proposal for the courts' consideration, one with a distinctive pro bono element - the so-called Public Service Alternative Bar Examination. Within the next several weeks, the Association of the Bar of the City of New York and the New York State Bar Association will issue a joint report, based largely on the findings of a three-year study by Kristin Booth Glen, a former State Supreme Court judge and dean of the City University of New York School of Law.

The report will recommend a pilot project of up to two years' duration to assess the effects of substituting public service for the multi-state law segment of the current bar exam. At personal option, law school graduates could perform supervised work in the courts instead of demonstrating their ability to memorize tracts of black letter law. In an essay scheduled for publication next month in the Columbia Law Review - titled "Thinking Out of the Bar Exam Box: a Challenge and Proposal for Change" - Dean Glen contends that public service, scored by specially trained evaluators, would be a more useful test of future lawyers' potential than rote memory, and would simultaneously strike down what she sees as unfair barriers for poor people and minorities seeking entry to the legal profession.

In a copy of her essay for the Columbia Law Review, Dean Glen suggests that students opting for public service could help fill what Chief Judge Kaye and others have championed in the wake of Sept. 11: the need to maintain the historic outpouring of volunteer lawyering, and increase the spirit of volunteerism.

"The [alternative exam] would require applicants... to work as lawyers in the court system for 10 to 12 weeks, performing a variety of tasks," Dean Glen writes in her essay. "[T]he court system has an enormous need for additional lawyer assistance.... [T]he chief judge has created numerous worthy justice initiatives [but because] there is little or no additional funding... the courts must rely on pro bono legal services if those initiatives are to be successful.

"Placing [bar] applicants for three months contributes to, but does not solve the courts' needs," the essay continued. "This is why those who elected the [alternative exam] would have an additional obligation-150 pro bono hours owed to the court system in the three years following admission.

"For every 200 successful [alternative exam] takers, the courts would have 30,000 pro bono hours of service, to be utilized as the courts found most compelling. As an additional advantage, all of that pro bono service would be done by attorneys already familiar with and trained in the courts they would serve."

As an example of urgent pro bono need, Dean Glen cited the Civil Court of New York, the nation's busiest. In landlord-tenant disputes, small claims and housing matters, high numbers of poor litigants must argue pro se. Only some of them receive help from the Civil Court's Self-Representation Office, which Dean Glen termed a "valiant attempt" at fair resolution. In the press release delayed by Mr. Bookstaver last September, Judge Lippman was more forceful in assessing the need for pro bono.

"The state of civil legal services has reached a turning point in New York," Judge Lippman said in the release. "Ninety percent of all tenants appearing in Housing Court - many facing eviction from their homes - do not have an attorney. And while the demand is great, the supply is shrinking.

"[T]he New York State Access to Justice Center... will galvanize our efforts to find permanent civil legal service funding streams, and I am confident that it will make significant headway in this important area of public interest."

Among the approximately 150 lawyers at the Fordham convocation was Kevin J. Curnin, a senior associate at Stroock & Stroock & Lavan LLP and attorney director of the firm's Public Service Project.

"We heard a lot of good ideas from people who've been contributing for many years to pro bono service," said Mr. Curnin. "We have to sift through all the ideas and decide what's best for the state, and how to accommodate our differences. We do things differently in New York City, for instance, than upstate." He added, "We've made a good start."

Frederick P. Rooney, director of the Community Legal Resource Network at CUNY Law, identified a major task ahead in meeting Chief Judge Kaye's hopes for keeping the pro bono ball rolling: legislation.

"We've got to reduce the liability of lawyers willing to engage in pro bono, in much the same way the Good Samaritan Law protects doctors who stumble onto accidents and provide care," said Mr. Rooney, who is also a general practice partner in Rooney, Mannicci & Gardner LLC of Bethlehem, Pa.

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On the Public Service Alternative Bar Examination, Mr. Curnin was reserved. "It will be a lightning rod for controversy," he predicted. "But a new idea like that, as bold as it is - that's what you'd expect."

Taking note of the generally conservative impulse of New York's legal community, Mr. Curnin suggested that the multiple pro bono aspect of Dean Glen's sweeping proposal could be lost on judges who might dismiss the matter in terms of a bar exam procedural issue with a "social good" patina.

"A lot of people are going to look at it and say, 'Well, I took the exam the way it is and that's what I had to do it,'" said Mr. Curnin. "What I'd love to see is this [alternative bar exam] in conjunction with an increase in legal work for the poor at law school clinics." Perhaps if the economic doldrums continue, and the poor get poorer, the pro bono increase that Mr. Curnin and others want will indeed occur. There does seem to be a relationship between the state of the economy and the amount of free legal service that big firms, at least, are willing or able to perform.

Two years ago, American Lawyer magazine (a sister publication of the Law Journal) found that during the fat year of 1999, the approximately 50,000 lawyers at the nation's 100 highest-grossing firms spent an average of eight minutes a day on pro bono cases, or about 36 hours per year, which is down significantly from an average 56 annual hours during the recession year of 1992. The American Bar Association recommends that private firm attorneys contribute 50 hours per year to pro bono work. By contrast, New York's Volunteers of Legal Service recommends 30 hours.

Esther F. Lardent, director of the Pro Bono Institute at Georgetown University Law Center, said the good economic times of the late '90s saw lawyers at large firms suddenly responsible for as many as 2,300 billable hours per year, compared with the less time-consuming and more typical 1,700 hours.

Poverty law agencies, too, have recently registered fewer hours of service to clients who most needed legal help. In 1996, a Republican-controlled Congress prohibited lawyers receiving federal funding - the mainstay of nearly all poverty law offices - from engaging in class-action lawsuits and matters involving abortion, illegal immigration or challenges to reduced welfare benefits inaugurated by President Clinton and some other Democrats. But even in good times - for lawyers, at least - there remain two seemingly immovable stumbling blocks for private attorneys willing to go to bat for poor people caught up in Civil Court matters:

Corporate lawyers whose transactional work seldom takes them inside a live courtroom full of emotional, frightened civilians and testy judges may feel like fish out of water in the great sea of pro bono work: divorce and child custody issues, landlord-tenant suits, workers' compensation and Social Security claims.

In a recent interview, Chief Judge Kaye noted efforts by the City Bar and by emergency consortia of large Manhattan firms to address this concern.

"We saw a whole new model develop - a holistic approach to lawyering, one-stop shopping," she said. "Corporate lawyers received brush-up training from the [City Bar], and a given firm without certain expertise felt free to call on another firm that had it." The result for pro bono clients traumatized by Sept. 11, said Chief Judge Kaye, was more efficient delivery of needed service: emotional, frightened clients had only one contact to make, no matter how many problems they had; the lawyers would sort out the mess. One of the principal functions of the Access to Justice Center, she said, would be to foster such a holistic approach.

The Slowly Grinding Wheels of Justice

On the second point, Judge Newton said in a recent interview, "I've heard this complaint a hundred times. An attorney arrives [in Civil Court] at 9:30 in the morning, hoping the matter can be taken care of in an hour. But then for a whole range of reasons, the case might not be heard until late in the afternoon - if at all that day."

In meetings around the state, Judge Newton has invited court administrators to suggest solutions to such complaints. A solution that makes most sense, she said, would be to change calendar procedures in order to expedite hearings where pro bono counsel are scheduled to appear.

"We can solve this if we keep working together," said Judge Newton. With reference to the dramatic increase in pro bono after Sept. 11, she added, "The first thing I learned is that there is a great passion among lawyers and judges to focus on access to justice, no matter what problems we have to solve.

"The second thing I learned is the importance of collaboration among judges, bar associations, private attorneys and civil legal service providers. If we get everybody to the table, we'll crystallize these problems and turn our focus onto solutions that will work."

Meanwhile, Mr. Rooney suggested that lawyers might individually elect to do more reduced fee or "low-bono" work - in the manner of the New York firm Marcos & Negrón LLP. Last year, the ABA presented the firm with its Pro Bono Publico Award, despite the fact that Marcos & Negrón does not work for free.

"But they do outstanding work at reduced fees, and it was good to see that encouraged by the ABA," said Mr. Rooney. His own firm in Bethlehem, he said, operates under the Marcos & Negrón philosophy.

"We make a decent living. Sure, it would be great to make a lot more. But when you

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represent a client in desperate need of service who may not have the required retainer - guess what?

"That person will come back to you when they have a personal injury case, or some other case that has the chance of substantial economic gain," he said. "Kindness can pay off."